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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/589,250

12/14/2006

Jean-Marc Scherrer

0502-1047

5714

466

7590

03/05/2009

YOUNG & THOMPSON

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EXAMINER

HIJAZ, OMAR F

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,250	<b>Applicant(s)</b> SCHERRER ET AL.	
	<b>Examiner</b> OMAR HIJAZ	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Preliminary amendment received on August 14, 2006 has been acknowledged, claims 1-10 were cancelled and new claims 11-30 were added. The Amendment filed on December 4, 2008 has been entered. Claims 11-30 have been amended. Therefore, claims 11-30 are now pending in the application.

#### ***Response to Amendment***

1. The previous specification objections are withdrawn in light of Applicant's amendments.
2. The previous claim objections are withdrawn in light of Applicant's amendments.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, at line 18, the recited term "it" renders the claim indefinite since it does not positively set forth the element that applicant is referring to.

Same as in claim 21, at line 7.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-17, 19-27, and 29-30, as best understood, are rejected under 35

U.S.C. 103(a) as being unpatentable over Scherrer (U.S. Patent No. 5,029,422) in view of Barker (U.S. Patent No. 3,323,819).

As per claim 11, Scherrer teaches a false ceiling (a false ceiling; abstract) comprising a stretched piece of fabric (taut sheet; abstract) held around a periphery of the fabric by an edge (harpoon edge 10; figure 5) that can be attached to ribbands (fixing plate 39) fixed to a ceiling and/or walls of a room (a false ceiling constituted by a taut sheet fastened, along its edges, to a support fixed to the walls of a room; abstract), in which the ribbands comprise a holding arrangement (31) having two parallel flanges (33 and 34) at a spacing from each other (as illustrated, the double rail 31 has two flanges, central flange 33 and vertical flange 34 which are parallel and spaced apart; figure 5), namely a first outer flange (34) and a second lower inner flange (33) that ends in a shoulder (33a) that extends towards the first outer flange (34) and ends at a distance from the first flange (as illustrated, the shoulder 33a extends towards the vertical flange 34 at a distance; figure 5), to enable the edge to pass through, such that the edge can simply rest on the shoulder (as illustrated, the harpoon edge 10 passes through the flanges 33 and 34 and rests on the shoulder 33a; figure 5), wherein the ribband comprises a base (as illustrated, the base is depicted by 32 where the flanges intersect; see figure 5A below) and two holding arrangements, for which the flanges are inclined from the base (as illustrated, two sets of flanges for holding the harpoon edges 10 extend from the base; figure 5) and that their ends are separated such that a

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distance (a; figure 5A below) between the end of the first outer flange and a plane of the first outer flange in the opposite holding arrangement is equal to the distance (b; figure 5A below) separating the shoulder of the latter holding arrangement from the first outer flange associated with it (as illustrated, there is a distance between the first pair of flanges, which is equal to the distance between the second pair of flanges; figure 5A).

Scherrer fails to specifically disclose the dimensions as specified between the flanges. However, a change in size is generally recognized as being within the level of ordinary skill in the art. In *re Rose*, 105 USPQ 237 (CCPA 1955). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Scherrer to include flanges with the claimed dimensions in order to accommodate for a particular size of harpoon edge.

Similarly, it would have been an obvious matter of choice to one of ordinary skill in the art to have modified the shape of the double rail with a shared flange as taught by Scherrer to consist of a pair of flanges, since such a modification would have only involved a mere change in the shape of a component. And since the functionality of the double rail flange is maintained, absent any persuasive evidence that a particular configuration of the claimed shape is significant, a change in shape is generally recognized as being within the level of ordinary skill in the art (In *re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

In addition, the figure 5 embodiment of Scherrer discloses use as a false ceiling but fails to disclose its use as a false wall. However it is construed that the structural attributes of the assembly make it capable of being utilized as a false wall, if it is merely

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rotated to the appropriate angle. In addition, an alternate embodiment of Scherrer as shown in figure 4 discloses the assembly's utilization as a false wall. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structural embodiment of figure 5 such that it could be utilized as a false wall, as taught by the embodiment of figure 4.

In addition, Scherrer fails to disclose the first outer flanges converge towards each other.

Barker discloses a structural arrangement for joining, holding, and retaining sheet members within a connector (col. 1, lines 11-12) to form a self supporting walled structure (col. 1, line 24) with flanges that converge towards each other (figure 4).

Therefore from the teaching of Barker, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the outer flanges of Scherrer to converge towards each other as taught by Barker in order to provide for sheets that are firmly gripped or locked in place and secured against separation or loosening under stress (col. 1, lines 26-29).

As per claim 12, Scherrer teaches the two holding arrangements are symmetrical about a plane perpendicular to the base (as illustrated, the flange arrangement is symmetrical about an axis which is perpendicular to the base; figure 5).

As per claim 13, Scherrer fails to disclose the outer flanges are inclined by about a 45 degree angle from the base.

Barker discloses a structural arrangement for joining, holding, and retaining sheet members within a connector (col. 1, lines 11-12) to form a self supporting walled

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structure (col. 1, line 24) with flanges that converge towards each other at about a 45 degree angle from the base (figure 4).

Therefore from the teaching of Barker, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the outer flanges of Scherrer to converge towards each other as taught by Barker in order to provide for sheets that are firmly gripped or locked in place and secured against separation or loosening under stress (col. 1, lines 26-29).

As per claim 14, Scherrer teaches the base is composed of a support plate (as illustrated, the base 32 supports the flanges; figure 5A below).

As per claim 15, Scherrer teaches the support plate is provided with attachment elements on its face opposite the holding arrangements (as illustrated, the support plate has an attachment element extending from its face on the opposite side of the holding arrangements; figure 5A below).

As per claim 16, Scherrer teaches a bottom of at least one of the first outer flanges extends on the opposite side of the holding arrangements by the flange perpendicular to the base (as illustrated, the outer vertical flanges 34 and 35 extend on the opposite side of the double rail 31 by flanges perpendicular to the base; figure 5A below).

As per claim 17, Scherrer teaches each first outer flange extends on the opposite side of the holding arrangements, by a flange perpendicular to the base (as illustrated, the outer vertical flanges 34 and 35 extend on the opposite side of the double rail 31 by flanges perpendicular to the base; figure 5A below).

As per claim 19, Scherrer discloses the ribband is made in two parts that can be fixed together (the rail assembly of figure 5 is of a similar assembly and is capable of being made in two parts that can be fixed together).

As per claim 20, Scherrer discloses the two parts can be fixed to a plate common to their base (the rail assembly of figure 5 is of a similar assembly and is capable of being made in two parts that can be fixed to a plate common to their base).

As per claim 21, Scherrer teaches a ribband (fixing plate 39) for receiving an edge (harpoon edge 10; figure 5) of a piece of fabric to make a false wall, (a false ceiling constituted by a taut sheet fastened, along its edges, to a support fixed to the walls of a room; abstract), said ribband comprising a holding arrangement (31) having two parallel flanges (33 and 34) at a spacing from each other (as illustrated, the double rail 31 has two flanges, central flange 33 and vertical flange 34 which are parallel and spaced apart; figure 5), namely a first outer flange (34) and a second lower inner flange (33) that ends in a shoulder (33a) that extends towards the first outer flange (34) and ends at a distance from the first outer flange (as illustrated, the shoulder 33a extends towards the vertical flange 34 at a distance; figure 5), to enable the edge to pass through, such that it can rest on the shoulder (as illustrated, the harpoon edge 10 passes through the flanges 33 and 34 and rests on the shoulder 33a; figure 5A below), wherein the ribband comprises a base (as illustrated, the base is depicted by 32 where the flanges intersect; figure 5) and two holding arrangements, for which the flanges are inclined from the base (as illustrated, two sets of flanges for holding the harpoon edges 10 extend from the base; figure 5) and that their ends are separated such that a



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distance (a; figure 5A below) between an end of the first outer flange and a plane of the first outer flange in the opposite holding arrangement is equal to the distance (b; figure 5A below)) separating the shoulder of the latter holding arrangement from the first outer flange associated with the shoulder (as illustrated, there is a distance between the first pair of flanges, which is equal to the distance between the second pair of flanges; figure 5A below).

Scherrer fails to specifically disclose the dimensions as specified between the flanges. However, a change in size is generally recognized as being within the level of ordinary skill in the art. In *re Rose*, 105 USPQ 237 (CCPA 1955). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Scherrer to include flanges with the claimed dimensions in order to accommodate for a particular size of harpoon edge.

Similarly, it would have been an obvious matter of choice to one of ordinary skill in the art to have modified the shape of the double rail with a shared flange as taught by Scherrer to consist of a pair of flanges, since such a modification would have only involved a mere change in the shape of a component. And since the functionality of the double rail flange is maintained, absent any persuasive evidence that a particular configuration of the claimed shape is significant, a change in shape is generally recognized as being within the level of ordinary skill in the art (In *re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

In addition, the figure 5 embodiment of Scherrer discloses use as a false ceiling but fails to disclose its use as a false wall. However it is construed that the structural

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attributes of the assembly make it capable of being utilized as a false wall, if it is merely rotated to the appropriate angle. In addition, an alternate embodiment of Scherrer as shown in figure 4 discloses the assembly's utilization as a false wall. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structural embodiment of figure 5 such that it could be utilized as a false wall, as taught by the embodiment of figure 4.

In addition, Scherrer fails to disclose the first outer flanges converge towards each other.

Barker discloses a structural arrangement for joining, holding, and retaining sheet members within a connector (col. 1, lines 11-12) to form a self supporting walled structure (col. 1, line 24) with flanges that converge towards each other (figure 4).

Therefore from the teaching of Barker, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the outer flanges of Scherrer to converge towards each other as taught by Barker in order to provide for sheets that are firmly gripped or locked in place and secured against separation or loosening under stress (col. 1, lines 26-29).

As per claim 22, Scherrer teaches the two holding arrangements are symmetrical about a plane perpendicular to the base (as illustrated, the flange arrangement is symmetrical about an axis which is perpendicular to the base; figure 5).

As per claim 23, Scherrer fails to disclose the outer flanges are inclined by about a 45 degree angle from the base.

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Barker discloses a structural arrangement for joining, holding, and retaining sheet members within a connector (col. 1, lines 11-12) to form a self supporting walled structure (col. 1, line 24) with flanges that converge towards each other at about a 45 degree angle from the base (figure 4).

Therefore from the teaching of Barker, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the outer flanges of Scherrer to converge towards each other as taught by Barker in order to provide for sheets that are firmly gripped or locked in place and secured against separation or loosening under stress (col. 1, lines 26-29).

As per claim 24, Scherrer teaches the base is composed of a support plate (as illustrated, the base 32 supports the flanges; figure 5A below).

As per claim 25, Scherrer teaches the support plate is provided with attachment elements on its face opposite the holding arrangements (as illustrated, the support plate has an attachment element extending from its face on the opposite side of the holding arrangements; figure 5A below).

As per claim 26, Scherrer teaches the bottom of at least one of the first outer flanges extends on the opposite side of the holding arrangements by a flange perpendicular to the base (as illustrated, the outer vertical flanges 34 and 35 extend on the opposite side of the double rail 31 by flanges perpendicular to the base; figure 5A below).

As per claim 27, Scherrer teaches each first outer flange extends on the opposite side of the holding arrangements, by the flange perpendicular to the base (as illustrated,

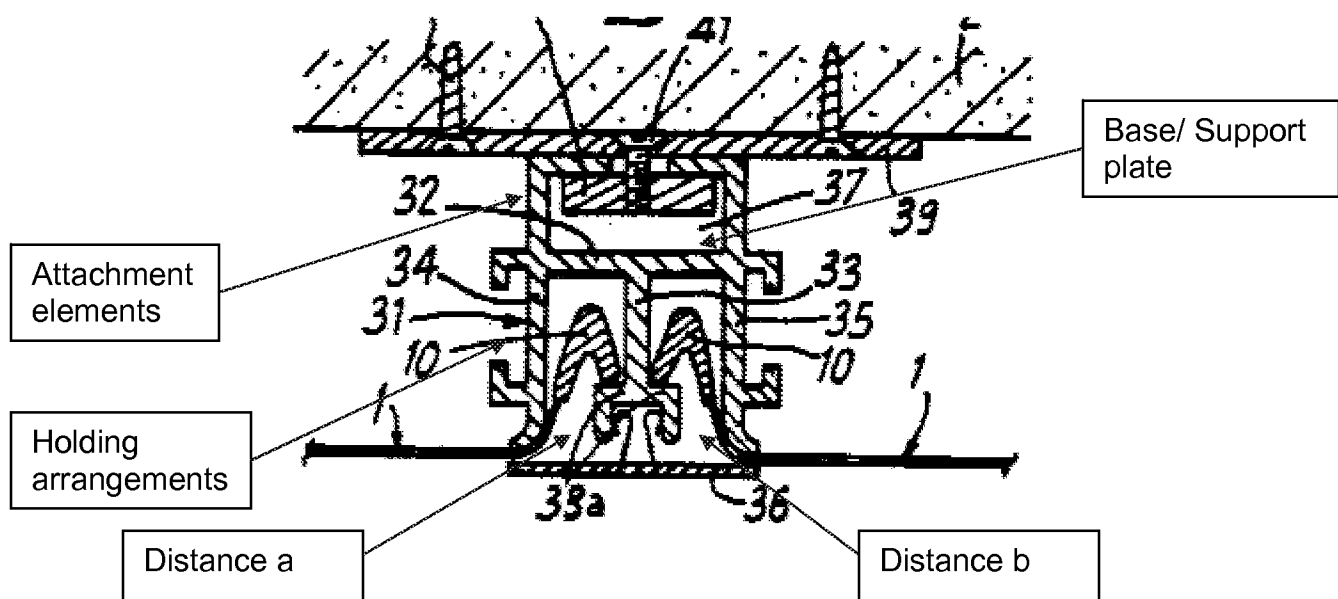
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the outer vertical flanges 34 and 35 extend on the opposite side of the double rail 31 by flanges perpendicular to the base; figure 5A below).

As per claim 29, Scherrer discloses the ribband is made in two parts that can be fixed together (the rail assembly of figure 5 is of a similar assembly and is capable of being made in two parts that can be fixed together).

As per claim 30, Scherrer discloses the two parts can be fixed to a plate common to their base (the rail assembly of figure 5 is of a similar assembly and is capable of being made in two parts that can be fixed to a plate common to their base).

**FIGURE 5A**



7. Claims 18 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherrer (U.S. Patent No. 5,029,422) in view of Barker (U.S. Patent No. 3,323,819) and further in view of Scherrer et al. (U.S. Pub. No. 2006/0156667 A1).

As per claims 18 and 28, the Scherrer and Barker combination discloses the elements of the claimed invention as mentioned in claims 17 and 27 above, but fails to disclose the first outer flanges cooperate with a stirrup provided with a tie rod fixed to the ceiling of the room, to hold the ribband.

Scherrer et al. discloses a suspension system for false ceilings (suspended ceiling; abstract) with a stirrup and a tie rod fixed (elements 3 and 19) attached to the ceiling of the room (paragraph 22).

Therefore, from the teaching of Scherrer et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the wall/ceiling mounting fixing plate and screws of the Scherrer and Barker combination with a stirrup and tie rod as taught by Scherrer et al. in order to accommodate for any required spacing between the false sheet and the structural wall or ceiling.

### ***Response to Arguments***

8. Applicant's amended claims and arguments have been considered but are moot in view of the new ground(s) of rejection. New reference Bernardino (U.S. Pub. No. 2001/0052212 A1) has been added to overcome applicant's arguments. In addition, applicant argues that Scherrer pertains to a false ceiling and not a false wall. However Scherrer also discloses an embodiment for use as a false wall, and the elected embodiment is capable of being used as a wall component. Also applicant argues that none of the applied references suggests a ribband technology allowing to reduce the gap between two adjacent elements of the fabric surface. However applicant is reminded that functional language has been given little patentable weight because they

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fail to add any steps and are thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in additional steps. See *Bristol-Meyers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1375-76, 58 USPQ2d 1508, 1513 (Fed. Cir. 2001).

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR HIJAZ whose telephone number is (571)270-5790. The examiner can normally be reached on Mon-Fri 9:30 a.m. - 7:00 p.m. (alternating Fridays).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571)272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OFH

/Brian E. Glessner/  
Supervisory Patent Examiner, Art Unit 3633